

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JOHN CURTIS RICE,

Plaintiff,

- against -

COX MEDIA GROUP, LLC
COX RADIO, INC.
COX COMMUNICATIONS, INC.

Defendants.

Docket No. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff John Curtis Rice (“Rice” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendants Cox Media Group, LLC (“Cox Media”), Cox Radio, Inc. (“Cox Radio”), Cox Communications, Inc. (“Cox Communications”) (and all together “Defendants”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act and for the removal and/or alteration of copyright management information under Section 1202(b) of the Digital Millennium Copyright Act. This action arises out of Defendants unauthorized reproduction and public display of a copyrighted photograph of Nayla Kidd, owned and registered by Rice, a New York City based photojournalist, on forty-seven websites owned and operated by Defendants. Accordingly, Rice seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or are doing business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Rice is a professional photojournalist in the business of licensing his photographs to online, print, and television stations for a fee, having a usual place of business at 777 Kappock Street, Bronx, New York, 10463. Rice's photographs have appeared in many publications around the United States.

6. Upon information and belief, Cox Media is a limited liability company duly organized and existing under the laws of the State of Delaware with a place of business at 555 Sunrise Highway, Babylon, New York, 11704. Cox Radio is a corporation duly organized and existing under the laws of the State of Delaware, with a place of business at 555 Sunrise Highway, Babylon, New York, 11704. At all times material hereto, Cox Media and Cox Radio has owned and operated websites at the URL's: www.journal-news.com, www.hot105fm.com, www.b985.com, www.thenew93q.com, www.wgauradio.com, www.daytondailynews.com, www.krmg.com, www.springfieldnewssun.com, www.mymagic949.com, www.wsbradio.com, www.wokv.com, www.1037chuckfm.com, www.Y100fm.com, www.houstonseagle.com, www.countrylegends971.com, www.myhot995.com, www.k923orlando.com, www.97xonline.com, www.wbli.com, www.wduv.com, www.easy1065.com, www.kiss104fm.com, www.kissrocks.com, www.magic1021.com, www.wbab.com, www.magic1053.com, www.hits97.3.com, www.kono1011.com, www.wgocarolinas.com,

www.kkyx.com, www.yourgeorgiacountry.com, www.969theeagle.com, www.wedr.com, www.1037chuckfm.com, www.1033theeagle.com, www.icflorida.com, www.X1071atlanta.com, www.wape.com, www.X1029.com, www.accessatlanta.com, www.dayton.com, www.myajc.com, www.ajc.com, www.news965.com, www.mystatesman.com, www.austin360.com, www.mydaytondailynews.com (the “Websites”).

7. Upon information and belief, Cox Communications is a corporation duly organized and existing under the laws of the State of Delaware with a place of business at 555 Sunrise Highway, Babylon, New York, 11704. At all times material hereto, Cox Communications has owned and operated the website www.myconnection.cox.com (“Cox Communications Website”).

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photograph

8. On or about May 14, 2016, Nayla Kidd, an engineering student at Columbia University went missing. Her disappearance went viral with police on a manhunt to find her. Nayla skipped her college exams, changed her bank account, got another phone number, and deleted her Facebook account. About two weeks later Nayla was found healthy. She stated that she needed a break from her high pressured Ivy League education and wanted a fresh start. The story was not only heavy covered by the press in New York but it was also covered nationally around the United States.

9. On or about May 29, 2016, Rice photographed Nayla Kidd next to one of her missing student posters (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

10. Rice then licensed the Photograph to The New York Post. On May 29, 2016, The New York Post ran an article that featured the Photograph on its web edition entitled, *Why I had to escape my Ivy League life and disappear*. See (<http://nypost.com/2016/05/29/why-i-had-to-escape-my-ivy-league-life-and-disappear/>). Rice's name was featured in a gutter credit identifying him as the photographer of the Photograph. A true and correct copy of the Photograph on the article is attached hereto as Exhibit B.

11. Rice is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

12. The Photograph was registered with Copyright Office and was given Copyright Registration Number VA 2-006-861, effective May 7, 2016.

B. Defendants Infringing Activities

13. Upon information and belief, on or about May 31, 2016, Cox Media and Cox Radio ran articles on the Websites entitled *Missing Ivy League Student Nayla Kidd Shares Why She Went off the Grid*. See <http://www.journal-news.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/>, <http://www.hot105fm.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/>, <http://www.b985.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/>, <http://www.thenew93q.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/>, <http://www.wgauradio.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/>, <http://www.daytondailynews.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/>, <http://www.krmg.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/>,

<http://www.springfieldnewssun.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/>, <http://www.mymagic949.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/>,
<http://www.wsbradio.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/>, <http://m.wokv.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/>, <http://m.1037chuckfm.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/>, <http://m.y100fm.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/>,
<http://www.houstonseagle.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/>, <http://www.countrylegends971.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/>,
<http://www.myhot995.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/>,
<http://myconnection.cox.com/article/trending/aHR0cHM6Ly9pZGVudGlmaWVycy5jbWdkaWdpdGFsLmNvbS9tZWRSZXkvcHJvZC9uZXdzLm1lZGxleXN0b3J5LzMzNjEyMDMv/>,
<http://www.k923orlando.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/>, <http://www.97xonline.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/>, <http://www.wbli.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/>, <http://www.wduv.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/>,
<http://m.easy1065.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/>, <http://www.kiss104fm.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/>, <http://www.kissrocks.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/>

student-nayla-kidd-shares-why-sh/nrXk8/,

[http://www.magic1021.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-](http://www.magic1021.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/)

[why-sh/nrXk8/](http://www.wbab.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/), [http://www.wbab.com/news/news/national/missing-ivy-league-student-nayla-](http://www.wbab.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/)

[kidd-shares-why-sh/nrXk8/](http://www.magic1053.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/), [http://www.magic1053.com/news/news/national/missing-ivy-league-](http://www.magic1053.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/)

[student-nayla-kidd-shares-why-sh/nrXk8/](http://www.hits973.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/), [http://www.hits973.com/news/news/national/missing-](http://www.hits973.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/)

[ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/](http://www.kono1011.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/),

[http://www.kono1011.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-](http://www.kono1011.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/)

[why-sh/nrXk8/](http://www.gocarolinas.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/), [http://www.gocarolinas.com/news/news/national/missing-ivy-league-student-](http://www.gocarolinas.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/)

[nayla-kidd-shares-why-sh/nrXk8/](http://www.kkyx.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/), [http://www.kkyx.com/news/news/national/missing-ivy-league-](http://www.kkyx.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/)

[student-nayla-kidd-shares-why-sh/nrXk8/](http://www.yourgeorgiacountry.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/),

[http://www.yourgeorgiacountry.com/news/news/national/missing-ivy-league-student-nayla-kidd-](http://www.yourgeorgiacountry.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/)

[shares-why-sh/nrXk8/](http://www.969theeagle.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/), [http://www.969theeagle.com/news/news/national/missing-ivy-league-](http://www.969theeagle.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/)

[student-nayla-kidd-shares-why-sh/nrXk8/](http://www.wedr.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/), [http://www.wedr.com/news/news/national/missing-](http://www.wedr.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/)

[ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/](http://www.1037chuckfm.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/),

[http://www.1037chuckfm.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-](http://www.1037chuckfm.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/)

[why-sh/nrXk8/](http://www.1033theeagle.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/), [http://www.1033theeagle.com/news/news/national/missing-ivy-league-student-](http://www.1033theeagle.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/)

[nayla-kidd-shares-why-sh/nrXk8/](http://www.icflorida.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/), [http://www.icflorida.com/news/news/national/missing-ivy-](http://www.icflorida.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/)

[league-student-nayla-kidd-shares-why-sh/nrXk8/](http://www.x1071atlanta.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/),

[http://www.x1071atlanta.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-](http://www.x1071atlanta.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/)

[why-sh/nrXk8/](http://www.wape.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/), [http://www.wape.com/news/news/national/missing-ivy-league-student-nayla-](http://www.wape.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/)

[kidd-shares-why-sh/nrXk8/](http://www.x1029.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/), [http://www.x1029.com/news/news/national/missing-ivy-league-](http://www.x1029.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/)

[student-nayla-kidd-shares-why-sh/nrXk8/](http://www.accessatlanta.com/photo/news/national/nayla-kidd/pDDJx8/),

<http://www.accessatlanta.com/photo/news/national/nayla-kidd/pDDJx8/>,

<http://www.dayton.com/photo/news/national/nayla-kidd/pDDJx8/>,
<http://www.myajc.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/>, <http://www.ajc.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/>, <http://www.news965.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/>, <http://www.mystatesman.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/>,
<http://www.austin360.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/>, <http://www.mydaytondailynews.com/news/news/national/missing-ivy-league-student-nayla-kidd-shares-why-sh/nrXk8/>. The articles prominently featured the Photograph. A true and correct copy of the articles are attached hereto as Exhibit C.

14. Cox Media and Cox Radio did not license the Photograph from Plaintiff for its article, nor did Cox Media or Cox Radio have Plaintiff's permission or consent to publish the Photograph on its Websites.

15. Upon information and belief, Cox Media and Cox Radio removed Rice's gutter credit.

16. Upon information and belief, on or about May 31, 2016 Cox Communications, Inc. ran an article on the Cox Communications Website entitled *Missing Ivy League Student Nayla Kidd Shares Why She Went off the Grid*. See <http://myconnection.cox.com/article/trending/aHR0cHM6Ly9pZGVudGlmaWVycy5jbWdkaWdpdGFsLmNvbS9tZWRSZXkvcHJvZC9uZXdzLm1lZGxleXN0b3J5LzMzNjEyMDMv/>. A true and correct copy of the article is attached hereto as Exhibit D.

17. Cox Communications did not license the Photograph from Plaintiff for its article, nor did Cox Communications have Plaintiff's permission or consent to publish the Photograph on Cox Communications Website.

18. Upon information and belief, Cox Communications removed Rice's gutter credit and did not attribute the Photograph to anyone.

FIRST CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST COX MEDIA, COX RADIO AND
COX COMMUNICATIONS, INC.)
(17 U.S.C. §§ 106, 501)

19. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-18 above.

20. Defendants infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Websites. Defendants are not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

21. The acts of Defendants complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

22. Upon information and belief, the foregoing acts of infringement by Defendants have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

23. As a direct and proximate cause of the infringement by Defendants of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

24. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendants willful infringement of the Photograph, pursuant to 17 U.S.C. § 504(c).

25. Plaintiff further is entitled to his attorney's fees and full costs pursuant to 17 U.S.C. § 505.

26. Defendants conduct, described above, is causing, and unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated by or measured in money damages. Plaintiff has no adequate remedy at law.

SECOND CLAIM FOR RELIEF
INTEGRITY OF COPYRIGHT MANAGEMENT INFORMATION AGAINST COX
MEDIA, COX RADIO, AND COX COMMUNICATIONS)
(U.S.C. § 1202)

27. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-26 above.

28. When the Photograph was published in an article in The New York Post, the article contained copyright management information protected under 17 U.S.C. § 1202(b).

29. Upon information and belief, in its article on the Websites, Defendants intentionally and knowingly removed copyright management information identifying Plaintiff as the photographer of the Photograph.

30. The conduct of Defendants violates 17 U.S.C. § 1202(b).

31. Upon information and belief, Defendants falsification, removal and/or alteration of the aforementioned copyright management information was made without the knowledge or consent of Plaintiff.

32. Upon information and belief, the falsification, alteration and/or removal of said copyright management information was made by Defendants intentionally, knowingly and with

the intent to induce, enable, facilitate, or conceal their infringement of Plaintiff's copyrights in the Photograph. Defendants also knew, or should have known, that such falsification, alteration and/or removal of said copyright management information would induce, enable, facilitate, or conceal their infringement of Plaintiff's copyright in the Photograph.

33. As a result of the wrongful conduct of Defendants as alleged herein, Plaintiff is entitled to recover from Defendants the damages, that he sustained and will sustain, and any gains, profits and advantages obtained by Defendant because of their violations of 17 U.S.C. § 1202, including attorney's fees and costs.

34. Alternatively, Plaintiff may elect to recover from Defendant statutory damages pursuant to 17 U.S.C. § 1203(c)(3) in a sum of at least \$2,500 up to \$25,000 for each violation of 17 U.S.C. § 1202.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendants be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. The Defendants be adjudged to have falsified, removed and/or altered copyright management information in violation of 17 U.S.C. § 1202.
3. Plaintiff be awarded either: a) Plaintiff's actual damages and Defendants profits, gains or advantages of any kind attributable to Defendants infringement of Plaintiff's Photograph; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
4. That, with regard to the Second Claim for Relief, Plaintiff be awarded either:
a) Plaintiff's actual damages and Defendants profits, gains or advantages of any

kind attributable to Defendants falsification, removal and/or alteration of copyright management information; or b) alternatively, statutory damages of at least \$2,500 and up to \$ 25,000 for each instance of false copyright management information and/or removal or alteration of copyright management information committed by Defendants pursuant to 17 U.S.C. § 1203(c);

5. That Defendants be required to account for all profits, income, receipts, or other benefits derived by Defendants as a result of its unlawful conduct;
6. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
7. That Plaintiff be awarded pre-judgment interest; and
8. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
June 21, 2016

LIEBOWITZ LAW FIRM, PLLC

By: /s/ Richard Liebowitz
Richard P. Liebowitz
11 Sunrise Plaza, Suite 301
Valley Stream, NY 11580
Tel: (516) 233-1660
RL@LiebowitzLawFirm.com

Attorney for Plaintiff John Curtis Rice

